

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
MARC L. SMITH, D.O.,	:	
RESPONDENT.	:	ORDER 0001549

Division of Enforcement Case No. 08MED364

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Marc L. Smith, D.O.
5320 N. Lovers Lane Rd. Apt 138
Milwaukee, WI 53225

Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Medical Examining Board
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A formal complaint was filed and served in this matter on November 28, 2011. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Marc L. Smith, D.O., Respondent, date of birth May 23, 1958, is licensed and currently registered by the Medical Examining Board (Board) to practice medicine and surgery in the State of Wisconsin, pursuant to license number 27806-20, which was first granted July 1, 1986.

2. Respondent's last address reported to the Department of Safety and Professional Services (Department) is 5320 N. Lovers Lane Rd. Apt 138, Milwaukee, WI 53225.

Prior Disciplinary Orders

3. On February 24, 1999, the Board issued a Final Decision and Order in a disciplinary proceeding against Respondent, which suspended Respondent's license retroactively for thirty days and required a Professional Mentor. The Order was based on Respondent having violated Wis. Admin. Code §§ Med 10.02(2)(p) and MED 10.02(2)(h) for prescribing controlled substances other than in the course of legitimate professional practice and for engaging in practice which tends to constitute a danger to the health, welfare, or safety of a patient.

4. Respondent failed to timely comply with his agreement to perform the community medical service as ordered and failed to comply with any of the extensions of the order which he had been granted. As a result, on September 25, 2002, the Board issued a Final Decision and Order in a disciplinary proceeding against Respondent, which reprimanded Respondent for violating Wis. Admin. Code § Med 10.02(2)(b).

5. On December 20, 2006, the Board entered a Final Decision and Order in a Disciplinary Proceeding against Respondent, which imposed limitations and conditions on Respondent's license.

a. The discipline was based on Respondent having prescribed controlled substances to patients in a manner that tended to constitute a danger to the patients and the public.

b. Among other things, the Order required Respondent to practice under a Professional Mentor approved by the Board and it prohibited Respondent from ordering, prescribing or administering any opioid or opiate including any product containing tramadol, for any patient for more than 30 days in any 12-month period

Current Violation

6. Following December 20, 2006, Respondent was employed as a physician at Riverwest Clinic in Milwaukee, Wisconsin.

7. On July 5, 2007, Respondent was interviewed by Drug Enforcement Administration Diversion personnel as part of an investigation involving Dr. A who was also located at the Riverwest Clinic in Milwaukee.

8. At the time of the July 5, 2007 interview, Respondent admitted that he had examined at least two patients for Physician A when Physician A was not present in the clinic and that, following those examination, the patients were provided with prescriptions for controlled substances on prescription forms presigned by Physician A. The parties disagree as to

the remainder of the admission and Respondent continues to deny that he admitted to the Drug Enforcement Administration diversion personnel that he completed the substance of the prescription forms which prescribed oxycodone for the patients. He further asserts the prescriptions were completed by Physician A and then left for the patients.

9. Oxycodone is a Schedule II Controlled Substance as defined in Wis. Stat. §§ 161.01(4) and 161.16(2) (a) and (b) with high abuse and severe dependency potential.

10. The DEA requested that Respondent surrender his DEA registration which provided privileges to prescribe, order, administer or possess controlled substances.

11. On July 20, 2008, Respondent surrendered his Drug Enforcement Administration Certificate of Registration to prescribe controlled substances listed in schedules II through V. The surrender occurred as a result of Respondent's "alleged failure to comply with the Federal requirements pertaining to controlled substances, and an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part".

12. Following surrender of his DEA certificate of registration, Respondent complied with the terms of the 2006 Order, including employing a mentor for supervision of his practice with reports to the Medical Examining Board.

13. On January 8, 2011, Respondent was hospitalized for a foot infection that resulted from his diabetes. Respondent underwent an above-knee amputation of one of his legs. The Professional Mentor required under the 2006 Order has not submitted any reports to the Department Monitor since January 2011 because Respondent was not currently practicing as a physician.

14. Respondent has not practiced medicine and surgery in the State of Wisconsin since January, 2011.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02(3), and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. §§ 227.44(5) and 448.02(5).

2. Respondent's conduct in surrendering his Drug Enforcement Administration Certificate of Registration for cause as set forth in paragraph 11, above, constitutes a violation of Wis. Admin. Code § MED 10.02(2) (q).

ORDER

IT IS HEREBY ORDERED that the stipulation of the parties is accepted.

IT IS FURTHER ORDERED that the license of Marc L. Smith, D.O. to practice medicine and surgery in the State of Wisconsin is hereby suspended indefinitely. That suspension is STAYED with the following restrictions:

1. No less than 10 business days prior to resumption of practice, Respondent shall advise the Medical Examining Board or its delegee of his intent to resume the practice of medicine and surgery in the State of Wisconsin. As part of this notification, Respondent shall provide the names and addresses of all practice locations and the composition of each practice. Any future change in practice location or composition shall be provided to the Board within five (5) days of such change.

2. If Respondent resumes practice Respondent shall not order, administer, dispense, supply or prescribe any controlled substances as defined in Wis. Stat. § 961.01(4) for a period of eighteen months from the effective date of this Order or his resumption of practice whichever is later. After the eighteen month period, Respondent may only resume the prescribing of controlled substances under the terms outlined in paragraph 5 below.

3. Prior to resumption of practice Respondent shall obtain a professional mentor who is certified by the American Board of Medical Specialties or the American Osteopathic Association and who shall sign the attached agreement and be preapproved by the Board to monitor Respondent's practice as follows:

A. Respondent's practice will be monitored for a period of one year from the date of Respondent's resumption of the practice of medicine and surgery in the State of Wisconsin or the effective date of this Order whichever is later.

B. The monitoring shall include a personal visit by the mentor to Respondent's practice on a bi-weekly basis on a day selected by the mentor. Respondent shall permit access by the mentor to any requested patient records, including but not limited to treatment records, laboratory reports, radiographs, billings statements and prescription records. The mentor shall review a randomly selected set of at least 10 records to determine if the history, presenting condition, clinical findings and diagnostics support the diagnosis and the treatment plan, including the prescribing of medications. The mentor shall discuss any questions he/she may have with regard to the diagnosis and treatment of the patient's condition/s with Respondent.

C. The mentor shall submit a detailed, written report to the Board on a quarterly basis setting forth his/her observations and findings. If the monitor notes a significant departure from the accepted standard of care at any time during the monitoring period, the monitor shall notify the Board immediately.

E. Respondent shall pay the full costs of the performance of the monitoring function within thirty days of submission of any statement from the monitor.

F. Upon completion of the first year of monitoring, the Board may, in its discretion and unilaterally, impose additional monitoring on the same terms, not to exceed one year. The Board shall have actual cause for such action and shall identify the reasonable basis in any Order which is issued.

G. Upon completion of the monitoring period and upon acceptance by the Board of all findings by the monitor indicating practice by Respondent meets the accepted standard of practice, the Board, or its delegee, shall notify Respondent in writing that he has completed all of the requirements of monitoring period.

4. Within six months of the effective date of this Order or the resumption of practice whichever is later, Respondent shall take and pass the Comprehensive Osteopathic Medical Variable-Purpose Examination (COMVEX) provided through the National Board of Osteopathic Medical Examiners.

5. If, after eighteen months from the effective date of this Order or the resumption of practice whichever is later, Respondent obtains a Drug Enforcement Administration (DEA) registration, Respondent may prescribe controlled substances as defined by Wis. Stat. § 961.01(4) with the following restrictions:

A. Prior to resuming the prescribing of controlled substances, Respondent shall successfully complete the education course entitled "Opiate Maintenance Treatment Programs provided through Case Western Reserve University, Cleveland, Ohio, or its equivalent. Respondent shall provide proof to the Board, or its designee, of satisfactory completion. Respondent is prohibited from applying any of the hours of education completed to satisfy the terms of this Order toward satisfaction of the continuing education required for any biennial registration renewal, and all costs of the program shall be paid by the Respondent. Any attendance at this course prior to the effective date of this Order shall not constitute satisfaction of this requirement.

B. Respondent shall continue or reengage the services of a professional mentor for a period of 6 months on the terms set forth in paragraph 3 above and the ongoing review shall include the terms of this paragraph and its subparts.

C. Respondent may not obtain, dispense, supply or administer any controlled substances. Respondent may prescribe controlled substances as set forth herein.

D. Respondent shall transfer all patients requiring controlled substances for management of chronic pain to another licensed physician.

E. Respondent may prescribe opioids, opiates and tramadol for no more than thirty (30) days for any individual patient in a one year period.

F. Respondent may prescribe no more than 100 mg. of morphine or morphine equivalents to a patient in one day.

G. Respondent's medical records must reflect a medical history, subjective complaints, clinical findings, including diagnostics, and a diagnosis of a condition requiring the prescribing of opioids, opiates and tramadol. The records must further reflect the plan for treatment of that condition, which shall include all other appropriate treatments in addition to the prescribing of pain medications. If the patient's pain has not resolved within the 30 days of treatment, the patient shall be referred to another practitioner, unless the pain may be treated by mechanisms other than with opiates, opioids or tramadol.

H. Respondent shall keep a log of all prescribed controlled substances and tramadol. The log shall include the date prescribed, the drug, amount and patient's name and address.

I. At the end of the six month period of review as set forth in paragraph 5B above, the Mentor shall submit a final report regarding Respondent's compliance with the terms of this Order. If Respondent has successfully completed the requirements of this Order, Respondent's license shall be restored to full and unrestricted status.

IT IS FURTHER ORDERED that this Order is not to be interpreted or represented to be an endorsement by the Board of reinstatement of Respondent's DEA registration.

IT IS FURTHER ORDERED pursuant to Wis. Stat. § 440.22(2), that within six months of the date of this Order or the resumption of practice whichever is later, Respondent shall pay to the Department of Safety and Professional Services the costs of this proceeding in the amount of \$1,000.00.

All requests, notices, reports and payments shall be provided to:

Department Monitor
Department of Safety and Professional Services

Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered or fails to comply with the ordered continuing education as set forth above, the Respondent's license (#27806-20) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs or completion of the continuing education.

This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Sheldon Wasserman, MD 5/17/12
A Member of the Board JK Date